

## AIR TRANSPORT SERVICES

*Exchanges of notes at Bern May 13, 1949, amending agreement of  
August 3, 1945  
Entered into force May 13, 1949*

63 Stat. 2437; Treaties and Other  
International Acts Series 1929

*The American Minister to the Chief of the Federal Political Department*

LEGATION OF THE  
UNITED STATES OF AMERICA  
BERN, May 13, 1949

EXCELLENCY:

I have the honor to refer to the conversations between the Governments of the United States of America and Switzerland in regard to the amendment of the Interim Agreement relating to Air Transport Services concluded between the United States of America and Switzerland dated August 3, 1945,<sup>1</sup> with a view to the insertion of a dispute clause into this Agreement. I understand that these conversations have now resulted in a text agreed upon between the negotiating parties which is attached hereto and which is to be inserted as Article 10 of the Agreement.

I shall be glad to have you inform me whether the Swiss Government understands that the terms of the dispute clause to constitute Article 10 of the Agreement resulting from the conversations referred to are as found in the enclosure to this note.

If your answer is in the affirmative, the Government of the United States of America will regard the new Article 10 of the Agreement effective upon the date of your answer.

Accept, Excellency, the renewed assurances of my highest consideration.

J. C. VINCENT

His Excellency

Dr. MAX PETITPIERRE

*Federal Councilor*

*Chief of the Federal Political Department*

*Bern*

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<sup>1</sup> TIAS 1576, *ante*, p. 946.

## ARTICLE 10

Except as otherwise provided in this Agreement or its Annex, any dispute between the contracting parties relative to the interpretation or application of this Agreement or its Annex which cannot be settled through consultation shall be submitted for an advisory report to a tribunal of three arbitrators, one to be named by each contracting party, and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either contracting party. Each of the contracting parties shall designate an arbitrator within two months of the date of delivery by either party to the other party of a diplomatic note requesting arbitration of a dispute; and the third arbitrator shall be agreed upon within one month after such period of two months.

If either of the contracting parties fails to designate its own arbitrator within two months, or if the third arbitrator is not agreed upon within the time limit indicated, the President of the Council of the International Civil Aviation Organization (hereinafter called ICAO) shall be requested to make the necessary appointments by choosing the arbitrator or arbitrators from a panel of arbitral personnel maintained in accordance with the practice of ICAO.

The contracting parties will use their best efforts under the powers available to them to put into effect the opinion expressed in any such advisory report. A moiety of the expenses of the arbitral tribunal shall be borne by each party.

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*The Chief of the Federal Political Department to the American Minister*

[TRANSLATION]

THE CHIEF  
OF THE  
FEDERAL POLITICAL DEPARTMENT

BERN, May 13, 1949

MR. MINISTER:

In a letter dated today you were so good as to propose to me that an arbitration clause be inserted in the Interim Agreement between the United States of America and Switzerland relating to Air Transport Services, dated August 3, 1945. I have taken due note of the fact that such text, which would become article 10 of the agreement, was the subject of conversations between representatives of the Swiss Federal Authorities and representatives of the American Authorities.

I have the honor to inform Your Excellency that the Swiss Federal Coun-

cil approves the text in question and that it considers it to be in force as of the present date.

Accept, Mr. Minister, the assurances of my high consideration.

MAX PETITPIERRE

His Excellency

JOHN CARTER VINCENT

*Minister of the United States of America*

*Bern*

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*The American Minister to the Chief of the Federal Political Department*

LEGATION OF THE  
UNITED STATES OF AMERICA

BERN, May 13, 1949

EXCELLENCY:

I have the honor to refer to the conversations between the Governments of the United States of America and Switzerland in regard to the amendment of the Interim Agreement relating to Air Transport Services concluded between the United States of America and Switzerland on August 3, 1945, with a view to the incorporation of the Bermuda principles into this Agreement. I understand that these conversations which have taken place pursuant to the suggestion of the Federal Air Office communication of May 21, 1948, have now resulted in a text agreed upon between the negotiating parties which is enclosed herewith and which is to be inserted as the Annex immediately following Article 10 of the Interim Agreement of August 3, 1945. I further understand that the Schedule to the enclosed Annex has been agreed upon as a substitute for the present "Annex" of the Interim Agreement. It is finally understood that the enclosed Annex and Schedule will form an integral part of the Interim Agreement of August 3, 1945.

I shall be glad to have you inform me whether the Swiss Government understands that the terms of the Annex and of the Schedule resulting from the conversations referred to are as set forth in the enclosure to this note.

If your answer is in the affirmative, the Government of the United States of America will regard the new Annex and Schedule to the Interim Agreement of August 3, 1945, effective upon the date of your answer in accordance with the provisions of Article 9 of the Agreement.

Accept, Excellency, the renewed assurances of my highest consideration.

J. C. VINCENT

His Excellency

Dr. MAX PETITPIERRE

*Federal Councilor*

*Chief of the Federal Political Department*

*Bern*

## ANNEX

## SECTION I

One or more airlines designated by each of the contracting parties under the conditions provided in this Agreement will enjoy, in the territory of the other contracting party, rights of transit and of stops for non-traffic purposes, as well as the right of commercial entry and departure for international traffic in passengers, cargo and mail at the points enumerated on each of the routes specified in the Schedule attached.

## SECTION II

The air transport facilities available hereunder to the traveling public shall bear a close relationship to the requirements of the public for such transport.

## SECTION III

There shall be a fair and equal opportunity for the airlines of the contracting parties to operate on any route between their respective territories covered by this Agreement and Annex.

## SECTION IV

In the operation by the airlines of either contracting party of the trunk services described in the present Annex, the interest of the airlines of the other contracting party shall be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same routes.

## SECTION V

It is the understanding of both contracting parties that services provided by a designated airline under the present Agreement and Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in the present Annex shall be applied in accordance with the general principles of orderly development to which both contracting parties subscribe and shall be subject to the general principle that capacity should be related to:

- (a) traffic requirements between the country of origin and the countries of destination;
- (b) the requirements of through airline operation; and
- (c) the traffic requirements of the area through which the airline passes after taking account of local and regional services.

## SECTION VI

It is the intention of both contracting parties that there should be regular and frequent consultation between their respective aeronautical authorities and that there should thereby be close collaboration in the observance of the principles and the implementation of the provisions outlined in the present Agreement and Annex.

## SECTION VII

A. The determination of rates in accordance with the following paragraphs shall be made at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other carriers, as well as the characteristics of each service.

B. The rates to be charged by the air carriers of either contracting party between points in the territory of the United States and points in Swiss territory referred to in the attached Schedule shall, consistent with the provisions of the present Agreement and its Annex, be subject to the approval of the aeronautical authorities of the contracting parties, who shall act in accordance with their obligations under the present Annex, within the limits of their legal powers.

It is recognized that the determination of rates to be charged by an airline of one contracting party over a segment of the specified route, which segment lies between the territories of the other contracting party and a third country, is a complex question the over-all solution of which cannot be sought through consultation between only the two contracting parties. Pending the acceptance by both contracting parties of any multilateral agreement or recommendations with respect to such rates, the rates to be charged by the designated airlines of the two contracting parties over the route segment involved shall be set in the first instance by agreement between such airlines operating over such route segment, subject to the approval of the aeronautical authorities of the two contracting parties. In case such designated airlines cannot reach agreement or in case the aeronautical authorities of both contracting parties do not approve any rates set by such airlines, the question shall become the subject of consultation between the aeronautical authorities of the two contracting parties. In considering such rates the aeronautical authorities shall have regard particularly to Section IV of this Annex and to the desire of both contracting parties to foster and encourage the development of efficient and economically sound trunk air services by the designated airlines over the specified routes. If the aeronautical authorities cannot reach agreement, both contracting parties shall submit, at the request of either party, the question in dispute to arbitration as provided for in Article 10 of the Agreement.

C. Any rate proposed by the airline or airlines of either contracting party shall be filed with the aeronautical authorities of both contracting parties at

least thirty (30) days before the proposed date of introduction; provided that this period of thirty (30) days may be reduced in particular cases if so agreed by the aeronautical authorities of both contracting parties.

D. The Civil Aeronautics Board of the United States having approved the traffic conference machinery of the International Air Transport Association (hereinafter called IATA) for a period of two years beginning in February 1948, any rate agreements concluded through this machinery during this period and involving United States airlines will be subject to approval of the Board. Rate agreements concluded through this machinery will also be subject to the approval of the aeronautical authorities of Switzerland pursuant to the principles enunciated in paragraph B above.

E. The contracting parties agree that the procedure described in paragraphs F, G and H of this Section shall apply:

- 1) if during the period of the Civil Aeronautics Board's approval of the IATA traffic conference machinery, either any specific rate agreement is not approved within a reasonable time by either contracting party or a conference of IATA is unable to agree on a rate, or
- 2) at any time no IATA machinery is applicable, or
- 3) if either contracting party at any time withdraws or fails to renew its approval of that of the IATA Traffic Conference machinery relevant to this Section.

F. In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the contracting parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its airlines of services from the territory of the other contracting party from becoming effective, if in the judgment of the aeronautical authorities of the contracting party whose airline or airlines is or are proposing such rate, that rate is unfair or uneconomic. If one of the contracting parties on receipt of the notification referred to in paragraph C above is dissatisfied with the rate proposed by the airline or airlines of the other contracting party, it shall so notify the other contracting party prior to the expiry of the first fifteen (15) days of the thirty (30) days referred to, and the contracting parties shall endeavor to reach agreement on the appropriate rate.

In the event that such agreement is reached, each contracting party will exercise its best efforts to put such rate into effect as regards its airline or airlines.

If agreement has not been reached at the end of the thirty (30) day



period referred to in paragraph C above, the proposed rate may, unless the aeronautical authorities of the country of the airline concerned see fit to suspend its application, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph H below.

G. Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the contracting parties is dissatisfied with any rate proposed by the airline or airlines of either contracting party for services from the territory of one contracting party to a point or points in the territory of the other contracting party, it shall so notify the other prior to the expiry of the first fifteen (15) days of the thirty (30) day period referred to in paragraph C above, and the contracting parties shall endeavor to reach agreement on the appropriate rate.

In the event that such agreement is reached, each contracting party will use its best efforts to cause such agreed rate to be put into effect by its airline or airlines.

It is recognized that if no such agreement can be reached prior to the expiry of such thirty (30) days, the contracting party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

H. When in any case under paragraphs F and G above the aeronautical authorities of the two contracting parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one contracting party concerning the proposed rate or an existing rate of the airline or airlines of the other contracting party, upon the request of either, both contracting parties shall submit, at the request of either party, the question in dispute to arbitration as provided for in Article 10 of the Agreement.

#### SCHEDULE

1. An airline designated by the Government of the United States of America shall be entitled to operate air services on the air route specified via intermediate points, in both directions, and to make scheduled landings in Switzerland at the points specified in this paragraph:

The United States, over a North Atlantic route to Geneva and Zurich and beyond.

2. An airline designated by the Swiss Federal Air Office shall be entitled to operate air services on the air route specified via intermediate points, in both directions, and to make scheduled landings in the United States at the points specified in this paragraph:

Switzerland, over a North Atlantic route via Ireland or the Azores and Newfoundland to New York and Chicago.

3. Points on any of the specified routes may, at the option of the designated airline, be omitted on any or all flights.

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*The Chief of the Federal Political Department to the American Minister*

[TRANSLATION]

THE CHIEF  
OF THE  
FEDERAL POLITICAL DEPARTMENT

BERN, May 13, 1949

MR. MINISTER:

In a letter dated today you were so good as to propose to me that a new text be substituted for the present Annex to the Interim Agreement between the United States of America and Switzerland relating to Air Transport Services, dated August 3, 1945. I have taken note of the fact that such text was the subject of conversations between representatives of the Swiss Federal Authorities and representatives of the American Authorities.

I have the honor to inform Your Excellency that the Swiss Federal Council approves the text in question and that it considers it to be in force as of the present date, in accordance with article 9 of the agreement.

Accept, Mr. Minister, the assurances of my high consideration.

MAX PETITPIERRE

His Excellency

JOHN CARTER VINCENT

*Minister of the United States of America*  
*Bern*